

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 8

EASTERN NATURAL GAS COMPANY

Employer

and

CASE NO. 8-RC-15951

INTERNATIONAL BROTHERHOOD OF ELECTRICAL  
WORKERS, LOCAL UNION NO. 573<sup>1</sup>

Petitioner

**DECISION AND DIRECTION OF ELECTION**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding,<sup>2</sup> the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The labor organization involved claims to represent certain employees of the Employer.

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<sup>1</sup> The Petitioner's name appears as amended at the hearing.

<sup>2</sup> The parties have filed briefs which have been carefully considered.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

*All full-time and regular part-time service employees employed by the Employer at its Burghill, Ohio facility, but excluding all office clerical employees, professional employees, guards and supervisors as defined in the Act.*

There are approximately 11 employees in the unit found appropriate herein. The Employer is a public utility engaged in the distribution of natural gas in Northeastern Ohio, from its facility in Burghill, Ohio, the only location involved herein.

The Petitioner seeks a unit which includes only the eleven service employees. Contrary to the Petitioner, the Employer asserts that the appropriate unit should also include two clerical employees and a maintenance employee. The Employer does not dispute that the service employees should be included in the petitioned-for unit. While the Employer contends the clericals and maintenance employee should be included in the unit based on a community of interest analysis, it presented no evidence or witnesses in support of its position.<sup>3</sup>

Petitioner's witness, James J. Shader, is an organizer for the Petitioner. Shader testified that he collected information about the Employer's operation through discussions with employees and by making a personal visit to the Burghill facility where he requested Stan Bell to recognize Petitioner.

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<sup>3</sup> I have taken Administrative Notice of the fact that the Employer's Vice-President and General Manager, Stan Bell, attended the pre-hearing conference on September 20, 1999, with the Employer's Attorney. Immediately prior to the opening of the hearing, Bell left assertedly to visit the restroom.

Shader's testimony indicates that the eleven service employees work in the field installing gas pipelines into residences. They also install gas meters, read meters, check for gas leaks, and perform landscaping. The service employees work from 7:00 am. to 4:30 p.m. and receive a starting wage of eight dollars an hour.

Record testimony from Shader indicates that the two office clericals attend to billing and payroll in addition to answering customer complaints. Shader testified that the maintenance employee also performs cleaning. On cross-examination, however, Shader indicated that his testimony was based on what employees had told him about their duties.

At the hearing the Employer's counsel made a motion to strike Shader's testimony as hearsay. The hearing officer denied the motion to strike and I affirm that ruling. Since the Employer does not object to the inclusion of the service employees in the unit I find Shader's testimony to be sufficiently probative with respect to the service employees. In finding the service employees at the Burghill, Ohio facility appropriately included in a unit I note that the Board has found that the production and maintenance employees in one district of a public utility gas company can constitute an appropriate unit. **United Gas, Inc., 190 NLRB 618 (1971).**

With regard to the clerical and maintenance employees in issue, however, I am unwilling to rely on hearsay evidence to determine the community of interest which they may or may not share with the service employees. Accordingly, I shall allow the clerical employees and the cleaning/maintenance employee to vote under challenge.

At the conclusion of Shader's testimony, Counsel for the Employer made a motion to dismiss the petition for "lack of sufficient evidence." I deny the motion to dismiss. In reaching this conclusion, I have found, for the reasons expressed above, that the record contains sufficient

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Thereafter, the Employer's Attorney informed the Hearing Officer that Bell would not be returning to the

evidence to direct an election in a unit of service employees. Concerning the three employees in dispute, I have found the record to be insufficient to decide their status and, thus, I will allow them to vote under challenge. In denying the Employer's Motion to Dismiss, I rely on the Board's decision in *Mariah, Inc.*, 322 NLRB 586 (1996). In *Mariah* the Board set forth three factors which have been satisfied in the instant matter. First, the Employer was given an opportunity to present evidence on all relevant issues. *Ibid.* at p. 587. Second, there is sufficient evidence to make a unit determination and the Employer was given an opportunity to state its position and present evidence on the unit issue. *Ibid.* Finally, when necessary the eligibility of certain employees can be left for resolution, if necessary, in a post-election proceeding. *Ibid.*

The Employer's post-hearing brief cites *Universal Camera Corp. v. NLRB*, 340 U.S. 474 (1951); *Consolidated Edison Co. v. NLRB*, 305 U.S. 197 (1938); and *Cleveland Construction Inc. v. NLRB*, 44 F.3d 1010 (D. C. Cir. 1995), in connection with its motion to dismiss. I find these cases inapposite since, in the instant matter, the Employer never disputed the inclusion of the service employees and the disputed employees will be permitted to vote under challenge. *Universal Camera* involved an unfair labor practice proceeding that resulted in a Board order requiring reinstatement and backpay. In the context of that adversarial hearing, the Supreme Court decided that the standard of review under the Administrative Procedure Act was applicable to the National Labor Relations Act and requires a Board decision to be supported by substantial evidence. The instant representation matter does not raise any *Universal Camera* issues since, as noted above, the evidence is sufficient to support my conclusion under the circumstances present in this case. *Consolidated Edison*, also cited by the Employer in its post-hearing brief, is not in conflict with my conclusion herein since it requires that a decision must

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Hearing.

be based on “relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *305 U.S. 197 at 229*. For the reasons expressed above, I find the evidence herein to be adequate to support my finding. Finally, in *Cleveland Construction*, the court disapproved of the Board’s departure from its earlier precedent in a case that required analysis of the single versus multi-site presumption. No similar presumption is required to decide appropriateness of the petitioned-for unit in the instant matter.

The parties stipulated that Bell and Jim Love, Supervisor, are ineligible to vote in the election conducted herein. With no record evidence to the contrary, I accept the parties’ stipulation and shall exclude Bell and Love from the unit.

#### **DIRECTION OF ELECTION**

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board’s Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an

economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by **International Brotherhood of Electrical Workers, Local Union No. 573.**

### **LIST OF VOTERS**

In order to ensure that all eligible voters have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. **Excelsior Underwear Inc.**, 156 NLRB 1236 (1966); **N.L.R.B. v. Wyman-Gordon Co.**, 394 U.S. 759 (1969). Accordingly, it is directed that an eligibility list containing the *full* names and addresses of all the eligible voters must be filed by the Employer with the Regional Director within 7 days from the date of this decision. **North Macon Health Care Facility**, 315 NLRB 359 (1994). The Regional Director shall make the list available to all parties to the election. No extension of time to file the list shall be granted by the Regional Director except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

### **RIGHT TO REQUEST REVIEW**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington, by **October 21, 1999.**

Dated at Cleveland, Ohio this 7th day of October 1999.



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Frederick J. Calatrello  
Regional Director  
National Labor Relations Board  
Region 8

393-6068-8000  
420-0628